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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 - - - - - X
4 UNITED STATES OF AMERICA, : 09 CR 135
5 :
6 -against- :
7 United States Courthouse
8 JOHN BURKE, : Brooklyn, New York
9 :
10 Defendant. : June 8, 2012
11 : 9:30 o'clock a.m.
12 - - - - - X

12 TRANSCRIPT OF TRIAL
13 BEFORE THE HONORABLE STERLING JOHNSON
14 UNITED STATES SENIOR JUDGE, and a jury.

14 APPEARANCES:

15 For the Government: LORETTA E. LYNCH
16 United States Attorney
17 BY: JACQUELYN M. KASULIS
18 EVAN NORRIS
19 WHITMAN G. S. KNAPP
Assistant United States Attorneys
271 Cadman Plaza East
Brooklyn, New York

20 For the Defendant: HOWARD L. JACOBS, ESQ.
21 RICHARD JASPER, ESQ.
22 YING STAFFORD, ESQ.

23 Court Reporter: Gene Rudolph
24 225 Cadman Plaza East
25 Brooklyn, New York
(718) 613-2538

Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

1 (The following covered in the absence of the jury at
2 10:15 am.)

3 THE CLERK: Case on trial.

4 THE COURT: Mr. Norris, did you have an application?

5 MR. NORRIS: I do.

6 I have spoken about it with both defense counsel. I
7 believe they have conferred. I don't know whether they've had
8 a chance to speak with their client yet. I am asking them
9 right now.

10 MR. JACOBS: First of all, there is a verdict, Your
11 Honor?

12 THE COURT: I have just received a note, but I am
13 letting Mr. Norris put on the record, he has made an
14 application. It was on ECF.

15 MR. NORRIS: Yes. We made an application for a
16 supplemental instruction regarding the matter of unanimity and
17 the racketeering acts. I spoke about it with Mr. Jacobs this
18 morning to determine whether the defense would actually join
19 the application. That's what I am trying to determine right
20 now, as to whether they would also like that supplemental
21 instruction to ensure that the jury is clear that they don't
22 have to reach a decision --

23 THE COURT: I allowed you to put this on the record.
24 However, there have been closing arguments. The jury has been
25 instructed with respect to the law. They have been

1 deliberating for almost a week and you had wanted, what would
2 have to happen, the case to be reopened and to give a
3 supplemental instruction, and I am not and would not do that.

4 So it is moot anyway because let the record reflect
5 that the Court has received a note from the jury. It is
6 marked Court's Exhibit number 13.

7 "Your Honor:

8 Good morning.

9 We have reached a verdict."

10 (So marked.)

11 MR. NORRIS: Very well, Your Honor. I would
12 just -- it isn't too late from the government's perspective to
13 give the supplemental instruction if the Court were inclined
14 to do it. That's why I still raise the issue at this point.
15 I understand the practicalities of it, but to the extent
16 that --

17 THE COURT: Do you want me to give it to them after
18 they get this the verdict.

19 MR. NORRIS: Certainly no.

20 It would be to call them in to just clarify. If it
21 doesn't change their verdict, we can go straight away into
22 receiving the verdict. If it does, that's obviously an
23 important point, that they not suggest that something is not
24 proven if they haven't agreed on it. I think it would be --

25 THE COURT: You are on the record. We are going to

1 bring the jury in and take the verdict.

2 MR. JACOBS: Thank you, Your Honor.

3 MR. NORRIS: The defense, I take it, does not object
4 to not giving that supplemental instruction?

5 THE COURT: Who cares.

6 MR. JACOBS: We do not object to Your Honor's
7 ruling.

8 MR. NORRIS: The defense is not seeking the
9 government's supplemental instruction? That's clear on the
10 record.

11 MR. JACOBS: No.

12 THE COURT: I wouldn't care if they did.

13 MR. JASPER: Excuse me, Your Honor. Ms. Stafford
14 has all of our copies of the verdict sheet. Is there an extra
15 verdict sheet?

16 THE COURT: We will get you one.

17 (Pause.)

18 Seat the jury, please.

19 (Jury present.)

20 THE COURT: Have a seat, ladies and gentlemen.

21 Let the record reflect that the Court has received a
22 note, another note, from the jury. It is marked Court's
23 Exhibit number 13. It reads as follows:

24 "Your Honor:

25 Good morning."

1 Good morning.

2 "We have reached a verdict."

3 (So marked.)

4 Ana, please.

5 (Pause.)

6 THE CLERK: Foreperson, will you stand up, please?

7 THE COURT: Keep your voice up, Ana.

8 THE CLERK: As to Count One, on the charge of
9 racketeering conspiracy in Count One, how do you find the
10 defendant John Burke?

11 THE JUROR: Guilty.

12 THE CLERK: As to Racketeering Act 1-A, cocaine and
13 marijuana distribution conspiracy, how do you find?

14 THE JUROR: Proved.

15 THE CLERK: As to Racketeering Act 1-A, do you find
16 that the government has proved, beyond a reasonable doubt,
17 that the conspiracy alleged in Racketeering Act 1-A involved
18 cocaine?

19 THE JUROR: Yes.

20 THE CLERK: Do you find that the government has
21 proved, beyond a reasonable doubt, that the conspiracy alleged
22 in Racketeering Act 1-A involved marijuana?

23 THE JUROR: Yes.

24 THE CLERK: Racketeering Act 1-B, cocaine and
25 marijuana distribution, how do you find?

1 THE JUROR: Proved.

2 THE CLERK: Do you find that the government has
3 proved, beyond a reasonable doubt, that the conspiracy alleged
4 in Racketeering Act 1-B involved cocaine?

5 THE JUROR: Yes.

6 THE CLERK: Do you find that the government has
7 proved, beyond a reasonable doubt, that the conspiracy alleged
8 in Racketeering Act 1-B involved marijuana?

9 THE JUROR: Yes.

10 THE CLERK: As to Racketeering Act 2-A, conspiracy
11 to murder Daniel Zahn, how do you find?

12 THE JUROR: Not proved.

13 THE CLERK: Racketeering Act 2-B, murder of Daniel?
14 Zahn?

15 THE JUROR: Not proved.

16 THE CLERK: Racketeering Act three, conspiracy to
17 murder Bruce Gotterup, how do you find?

18 THE JUROR: Proved.

19 THE CLERK: Racketeering Act 3-B, murder of Bruce
20 Gotterup, how do you find?

21 THE JUROR: Proved.

22 THE CLERK: As to Racketeering Act 4-A, conspiracy
23 to murder John Gebert, how do you find?

24 THE JUROR: Proved.

25 THE CLERK: As to Racketeering Act 4-B, murder of

1 John Gebert, how do you find?

2 THE JUROR: Proved.

3 THE CLERK: As to Racketeering Act 5-A, robbery
4 conspiracy, how do you find?

5 THE JUROR: Proved.

6 THE CLERK: Racketeering Act 5-B, attempted robbery,
7 how do you find?

8 THE JUROR: Proved.

9 THE CLERK: On Count Two, murder in aid of
10 racketeering, John Gebert.

11 On the charge of murder in aid of racketeering in
12 Count Two, how do you find the defendant John Burke?

13 THE JUROR: Guilty.

14 THE CLERK: As to Count Three, murder, continuing
15 criminal enterprise as to John Gebert.

16 On the charge of murder while engaging in or working
17 in furtherance of a continuing criminal enterprise in Count
18 Three, how do you find the defendant John Burke?

19 THE JUROR: Guilty.

20 THE CLERK: Count Four, using, carrying and
21 possessing a firearm.

22 On the charge of using, carrying and possessing in
23 Count Four, how do you find the defendant John Burke?

24 THE JUROR: Guilty.

25 THE CLERK: Was or were the firearm or firearms in

1 question brandished?

2 THE JUROR: Yes.

3 THE CLERK: Was or were the firearms in question
4 discharged?

5 THE JUROR: Yes.

6 THE COURT: Juror number one, is that your verdict?

7 THE JUROR: Yes.

8 THE COURT: Number two?

9 THE JUROR: Yes.

10 THE COURT: Number three?

11 THE JUROR: Yes.

12 THE COURT: Four?

13 THE JUROR: Yes.

14 THE COURT: Five?

15 THE JUROR: Yes.

16 THE COURT: Six?

17 THE JUROR: Yes.

18 THE COURT: Seven?

19 THE JUROR: Yes.

20 THE COURT: Eight?

21 THE JUROR: Yes.

22 THE COURT: Nine?

23 THE JUROR: Yes.

24 THE COURT: Ten?

25 THE JUROR: Yes.

1 THE COURT: Eleven?

2 THE JUROR: Yes.

3 THE COURT: Twelve?

4 THE JUROR: Yes.

5 THE COURT: Okay. Ladies and gentlemen, I thank you
6 very much for your participation in this particular trial.
7 Trials are always very difficult but the most difficult task
8 is the one that you have. It is difficult, as you know, to
9 sit in judgment of another human being.

10 I always say that our system is not a perfect system
11 but I think it is the best one in the world. All we have to
12 do is look at these emerging countries throughout the world
13 and they are trying to emulate what we have. It is better
14 than having a military tribunal or one person or three people.
15 We have 12 citizens of the community making a determination
16 based solely upon the evidence and the law as it was given to
17 you.

18 Now, when people are called for jury duty, I know a
19 lot of them don't like to serve. But you had an opportunity
20 to serve and I guess it has been an experience for you.

21 I myself have done a lot in this particular system.
22 The only thing I have not done is to sit on a jury. I was
23 called once to sit on a jury, a civil jury, and I sat down and
24 I waited around, just like you guys waited around. I was in
25 jeans and an old sweatshirt, my book. They called me and then

1 when I mentioned my name, one of the lawyers said, "Are you
2 the Sterling Johnson?" And I said, "There is no the in my
3 name." I never got a chance to serve. I wish I did.

4 So I would like to say to you, thank you very much.
5 It was nice being with you and I hope I see you again soon.

6 Okay. Thank you.

7 (The following occurred in the absence of the jury.)

8 THE COURT: Do you have an application?

9 MR. NORRIS: Your Honor, we do not.

10 THE COURT: Sentencing date.

11 THE CLERK: October 25th, at 9:30.

12 MR. JACOBS: Your Honor, can we have 30 days to file
13 post-trial motions?

14 THE COURT: 30 days, July, what date?

15 THE CLERK: July 12th.

16 THE COURT: When do you want to respond?

17 MR. NORRIS: If we could have one month to respond,
18 Your Honor?

19 THE COURT: August.

20 THE CLERK: August 10th.

21 THE COURT: Then we'll have a status conference in
22 September.

23 THE CLERK: September 13th, 9:30.

24 THE COURT: What will probably happen is there has
25 to be a presentence report and I think that Probation is

1 really backed up. So the October date, it's a date, but it
2 will probably be moved.

3 MR. NORRIS: Very well.

4 THE COURT: Okay.

5 MR. NORRIS: Thank you, Your Honor.

6 (Matter concludes.)
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C O U R T E X H I B I T S:

Court's Exhibit number 13

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